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January 10, 2018

VIA ECFS

J. Adam Suppes
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Flat Wireless, LLC v. Celco Partnership d/b/a Verizon Wireless*,
EB Docket No. 15-147

Dear Mr. Suppes:

I participated in an oral argument before the DC Circuit Court last September. At the argument, the Commission's appellate counsel described a detailed process followed by the Enforcement Bureau to ensure that complaints filed under Section 208(b) of the Act are handled expeditiously and by the right Commission entity. To my knowledge, none of the procedures described by the Commission's counsel have been followed in this case, nor were they in the case of *NTCH, Inc. v. Verizon*. The Commission counsel also indicated that the Enforcement Bureau needs to be made aware that formal complaints filed with respect to charges, classifications, regulations or practices of common carriers must be processed under Section 208(b) of the Act. Counsel also suggested, with the Court's approbation, that if the Commission failed to act within the five month time period required by Section 208(b)(1), the aggrieved litigant should immediately seek mandamus relief from the Court.

In view of this colloquy, I am advising the staff as follows.

1. I have repeatedly advised the Enforcement Bureau in this case orally, in my Initial Brief, and in letters submitted Feb. 6, 2017 and May 31, 2017 that Flat Wireless, LLC's complaint is a complaint regarding the lawfulness of the charges assessed by Verizon Wireless for, inter alia, voice roaming rates, and is subject to the five month action deadline specified by Section 208(b)(1) of the Act. Since there is no other section of the Act under which Flat could file such a complaint, I am hereby advising you that the complaint is a Section 208(b) complaint.

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2. Flat's complaint also sought Title II treatment of its complaint regarding data roaming since the Commission has determined that data roaming is a Title II service. The only issue is whether the Commission properly forbore from Title II treatment in the absence of any record supporting such an action. We therefore also are asking 208(b) treatment of the data roaming portion of the complaint if data roaming is deemed not to be properly forborne from.
3. I request that the Enforcement Bureau, if it has not already done so via the process described by FCC counsel, initiate the process necessary to have this case resolved by the full Commission immediately.
4. I further request that the Enforcement Bureau advise me as soon as possible if it considers that challenges to the reasonableness of common carrier voice roaming charges are not complaints which are to be processed under Section 208(b) of the Act. Voice charges assessed by CMRS carriers were relieved of tariff filings by the Commission's *Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, Para. 176 (1994), and that forbearance would appear to put Flat's complaint squarely within the Commission's announced 208(b) treatment of services for which tariffs have been forborne from. *Implementation of Telecommunications Act of 1996*, 12 FCC Rcd 22497, 22514 (1997). Neither the Bureau nor the Commission has previously suggested that voice roaming complaints are not subject to Section 208(b). The Court invited a mandamus petition if necessary to secure the Commission's timely compliance with the Act's requirements.

I would appreciate a response no later than January 21 so that I can seek immediate redress if necessary.

Sincerely,



Donald J. Evans
Counsel for Flat Wireless, LLC

cc: Rosemary McEnery
Tamara Preiss
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